

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
<b>Caption in Compliance with D.N.J. LBR 9004-1(B)</b>	
Alla Kachan, Esq. Law Offices of Alla Kachan, P.C. 2799 Coney Island Avenue, Ste 202 Brooklyn, NY 11235 Tel.: (718) 513-3145	
In Re:	Case No.: 22-14771-VFP
Produce Depot USA LLC,  Debtor	Judge: <u>Vincent F. Papalia</u>
	Chapter: 11

**THE DEBTOR'S RESPONSE TO THE OBJECTION OF THE U.S. TRUSTEE TO  
MOTION FOR AN ORDER APPROVING AMENDED STIPULATION RESOLVING  
PACA TRUST CLAIMS OF PROMETO PRODUCE CORP.  
AND C.H. ROBINSON WORLDWIDE, INC.  
PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY**

**TO THE HONORABLE VINCENT F. PAPALIA  
UNITED STATES BANKRUPTCY JUDGE:**

Produce Depot USA LLC, the Debtor and Debtor in Possession, by and through its counsel Alla Kachan, Esq. of Law Offices of Alla Kachan, P.C., respectfully submits this Response (the "Response") to the Objection (the "Objection") of the US Trustee to the Debtor's Motion for an Order Approving the Amended Stipulation Resolving PACA Trust Claims of Prometo Produce Corp. and C.H. Robinson Worldwide, Inc. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy (the "Motion"). In further opposition thereof, the Debtor respectfully represents as follows:

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§157(a)-

(b) and 1334(b). This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On March 2, 2022, Produce Depot USA LLC filed a voluntary bankruptcy petition with the Bankruptcy Court for Eastern District of New York for relief under chapter 11 of title 11, United States Code, 11 U.S.C. §§ 101 et seq. (“Bankruptcy Code”). *See ECF Doc. No. 1.*

3. Under Bankruptcy Code §§ 1107 and 1108, the Debtors retain possession of their assets and are authorized, as the Debtors in Possession, to continue to operate and manage its business.

4. On June 10, 2022, the Debtor’s case was transferred Eastern District of New York to the District of New Jersey. *See ECF Doc. No. 50.*

5. On August 16, 2022, the Debtor filed the Motion for an Order Approving Amended Stipulation Resolving PACA Trust Claims of Prometo Produce Corp. and C.H. Robinson Worldwide, Inc. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy. *See ECF No. 84*

6. On September 6, 2022, the Objection to the Debtor’s Motion for an Order Approving Amended Stipulation Resolving PACA Trust Claims of Prometo Produce Corp. and C.H. Robinson Worldwide, Inc. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy was filed by the US Trustee. *See ECF No. 87.*

7. In the referenced motion the US Trustee asserted that unless and until the Corporate Debtor establishes in the record that it has the ability to perform the payments required of it by the Amended Stipulation, the Amended 9019 Motion must not be approved.

8. Currently, the Debtor’s balance on DIP account is \$199,584.37, which was accumulated from the first installment of \$100,000.00 under the Promissory Note dated March 29<sup>th</sup>, 2021, between Produce Depot and NYC Tropical House Inc., as amended on August 1, 2022 and a

subsequent installment of \$100,000.00 under the referenced Amended Promissory Note. A copy of the August bank statement from the Debtor's DIP account, is attached herein as Exhibit A. Additionally, the Debtor is expecting to receive the remaining balance of \$20,000.00 from NYC Tropical House Inc., pursuant to the terms of the referenced Amended Promissory Note. The proof of funds or proof of receipt, will be filed with the Court prior to the scheduled hearing on 9019 motion.

9. Furthermore, as per the terms of Stipulation of settlement, \$20,000.00 of the agreed upon settlement amount, will be paid by Mr. Ruelas, from his personal funds. The Affidavit of contribution of Mr. Ruelas will be filed with the Court prior the scheduled hearing for the referenced 9019 motion.

10. Consequently, the Debtor has demonstrated that it has sufficient funds to finance the referenced amended Settlement agreement.

11. Furthermore, the US Trustee maintains that the Court must find that the Corporate Debtor's compromise of the original Promissory Note was fair and equitable, and was done in the paramount interest of all creditors in this case. In the event that the court accepts the Debtor's position that the funds received under the referenced Promissory Note are PACA trust funds, the only parties that would have standing to object to the amendment of the promissory note, are all of the PACA creditors in the case. All known PACA creditors have accepted and agreed to settlement terms, currently awaiting court approval.

12. It is further the Debtor's position, that the compromise of the original Promissory Note, was fair and equitable and was made in the best interest of all Creditors. The payments under the Amended Promissory Note will allow the Debtor to fund the Settlement agreement upon its approval by the Bankruptcy Court immediately, and not over drawn out payment terms as initially

provided for in the original promissory note. Additionally, the last tranche of \$20,000 of the settlement funds, will allow the Debtor to finance a Settlement agreement with the third, and only other known PACA Creditor of the Debtor, Natural Flavor Produce LLC, upon its approval by the Bankruptcy Court. A 9019 motion for the approval of the settlement agreement.

13. Furthermore, the bar date for the filing of claims in the case, passed on May 31, 2022. Upon due service on all known and listed creditors, no other PACA or any other creditors of the Debtor have filed claims, or have contacted the Debtor to assert their interest, in any way.

14. Finally, it must be noted, that the Debtor continues diligent efforts to pursue claims that will then be used to fund a future Plan of Reorganization. Prior to the instant Bankruptcy filing, the Debtor filed an insurance claim for misuse of funds. It appears, that to date, an adjuster has been assigned to the claim, which is now in the process of review. Upon information and belief, the claim amount is in excess of \$1,000,000. The proof of filed claim is attached herein as Exhibit B.

15. Further, it is also the Debtor's belief, that there is a valid preference claim in the case, in the amount of \$26,912.88. Upon information and belief, Chrome Capital, a creditor of the Debtor, garnished the funds from the account of Produce Depo in the 90 day preference period, prior to the Bankruptcy filing. The Debtor by counsel, is reviewing the pertinent supporting documents, and expects to file and serve the preference action imminently. Thus, it appears likely that funds will be available for distribution to other, non PACA creditors in the case.

16. It is the Debtor's position that the Amended Stipulation Resolving PACA Trust Claims of Prometo Produce Corp. And C.H. Robinson Worldwide, Inc is fair and equitable and is in the best interests of the Creditors and Debtor's estate. The stipulation has been served on all known creditors, and parties in interest. To the best of the Debtor's knowledge and understanding, the only remaining PACA creditor in the case is Natural Flavor Produce LLC. The Debtor has

reached an agreement of settlement terms with Natural Flavor Produce LLC., and a 9019 motion for the approval of said settlement, will be filed in short order. As previously stated, there are no other known PACA creditors in the case, the Bar Date in the case has passed, and the majority of the settlement funds are currently in the Debtor in Possession account. The balance required to complete the settlement with Prometo and CH Robinson is being funded by Louis Rouelas, and the funds necessary to fund the settlement with Natural Flavor Produce LLC., are expected to be received in the Debtor's DIP account prior to the hearing on the Trustee's objection to the Amended 9019 motion.

17. In summary, it is the Debtor's belief, that the settlement of all known PACA creditors, as well as likely recovery of funds to fund a plan to pay the general unsecured creditors of the estate, will work together to allow for a feasible plan of reorganization, which would surely be in the best interest of all Creditors of the estate.

**WHEREFORE**, for all of the foregoing reasons, the objection of the US Trustee, should be denied in its entirety and the Debtor's 9019 motion should be granted; and for any such further relief this Court deem just.

Dated: Brooklyn, New York  
August 8, 2022

LAW OFFICES OF ALLA KACHAN, P.C.

By: /s/ Alla Kachan

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## EXHIBIT A



America's Most Convenient Bank®

T STATEMENT OF ACCOUNT

PRODUCE DEPOT USA LLC  
DIP CASE 22-40412 EDNY  
6 MOHEGAN TRAIL  
SADDLE RIVER NJ 07458-2931

Page: 1 of 2  
Statement Period: Aug 01 2022-Aug 31 2022  
Cust Ref #: T-###  
Primary Account #: 4047



Chapter 11 Checking

PRODUCE DEPOT USA LLC  
DIP CASE 22-40412 EDNY

Account 4047

ACCOUNT SUMMARY

Beginning Balance	100,085.00	Average Collected Balance	151,681.75
Other Credits	100,000.00	Interest Earned This Period	0.00
Checks Paid	500.63	Interest Paid Year-to-Date	0.00
Ending Balance	199,584.37	Annual Percentage Yield Earned	0.00%
		Days in Period	31

DAILY ACCOUNT ACTIVITY

Other Credits

POSTING DATE	DESCRIPTION	AMOUNT
08/16	WIRE TRANSFER INCOMING, NYC TROPICAL HOUSE INC.	100,000.00
	Subtotal:	100,000.00

Checks Paid

No. Checks: 1

\*Indicates break in serial sequence or check processed electronically and listed under Electronic Payments

DATE	SERIAL NO.	AMOUNT
08/31	9390	500.63
	Subtotal:	500.63

DAILY BALANCE SUMMARY

DATE	BALANCE	DATE	BALANCE
07/31	100,085.00	08/31	199,584.37
08/16	200,085.00		

## EXHIBIT B



PRODUCER		INSURED LOCATION CODE		DATE OF LOSS AND TIME		AM	
Angelli Tsitouridou Agency, LLC				03/04/2021		PM	
32-08 200th Street		CARRIER		NAIC CODE			
Bayside NY 11361		BLACKBOARD					
CONTACT NAME: Angelli Tsitouridou		POLICY NUMBER					
PHONE (A/C, No, Ext): (718) 224-3641		MORSTAN00001HIBP-25271-02					
FAX (A/C, No): (718) 425-0632		LINE OF BUSINESS					
E-MAIL ADDRESS: ANGIE@ATINSURANCEAGENCY.COM							
CODE:		SUBCODE:					
AGENCY CUSTOMER ID: 2016-00351							

INSURED			
NAME OF INSURED (First, Middle, Last)		INSURED'S MAILING ADDRESS	
PRODUCE DEPOT USA LLC		13-41 GARRISON AVE	
DATE OF BIRTH	FEIN (If applicable)	BRONX NY 10474	
PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	PRIMARY E-MAIL ADDRESS:	
		SECONDARY E-MAIL ADDRESS:	

CONTACT		CONTACT INSURED	
NAME OF CONTACT (First, Middle, Last)		CONTACT'S MAILING ADDRESS	
PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL		SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	
WHEN TO CONTACT		PRIMARY E-MAIL ADDRESS:	
		SECONDARY E-MAIL ADDRESS:	

OCCURRENCE	
LOCATION OF OCCURRENCE	POLICE OR FIRE DEPARTMENT CONTACTED
STREET:	
CITY, STATE, ZIP:	REPORT NUMBER
COUNTRY:	
DESCRIBE LOCATION OF OCCURRENCE IF NOT AT SPECIFIC STREET ADDRESS:	
DESCRIPTION OF OCCURRENCE (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)	
MISUSE OF FUNDS a member of the LLC in addition to other employees are under investigation and also being litigated against for misappropriation and theft of Produce Depot funds.	

TYPE OF LIABILITY							
PREMISES: INSURED IS		OWNER		TENANT		TYPE OF PREMISES	
OWNER'S NAME & ADDRESS (If not Insured)		PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL		SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL			
		PRIMARY E-MAIL ADDRESS:					
		SECONDARY E-MAIL ADDRESS:					
PRODUCTS: INSURED IS		MANUFACTURER		VENDOR		TYPE OF PRODUCT	
MANUFACTURER'S NAME & ADDRESS (If not Insured)		PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL		SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL			
		PRIMARY E-MAIL ADDRESS:					
		SECONDARY E-MAIL ADDRESS:					
WHERE CAN PRODUCT BE SEEN?							

**INJURED / PROPERTY DAMAGED**

NAME & ADDRESS (Injured/Owner)			EMPLOYER'S NAME & ADDRESS		
PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL		SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL		PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	
SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL				SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	
PRIMARY E-MAIL ADDRESS:			PRIMARY E-MAIL ADDRESS:		
SECONDARY E-MAIL ADDRESS:			SECONDARY E-MAIL ADDRESS:		
AGE	SEX	OCCUPATION	DESCRIBE INJURY		
WHERE TAKEN			WHAT WAS INJURED DOING?		
DESCRIBE PROPERTY (Type, model, etc.)			ESTIMATE AMOUNT	WHERE CAN PROPERTY BE SEEN?	

**WITNESSES**

NAME AND ADDRESS	PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL
	PRIMARY E-MAIL ADDRESS:	
	SECONDARY E-MAIL ADDRESS:	
NAME AND ADDRESS	PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL
	PRIMARY E-MAIL ADDRESS:	
	SECONDARY E-MAIL ADDRESS:	
NAME AND ADDRESS	PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL
	PRIMARY E-MAIL ADDRESS:	
	SECONDARY E-MAIL ADDRESS:	

REMARKS (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

REPORTED BY	REPORTED TO
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**Date: October 11, 2021**

To: [hrivera@morstan.com](mailto:hrivera@morstan.com); [resolution@blackboardinsurance.com](mailto:resolution@blackboardinsurance.com)

### **Acknowledgement of Assignment**

Insured:	Produce Depot USA LLC
Claimant:	Produce Depot USA LLC
Date of Loss	3/4/2021
Date Reported	10/11/2021
TPA File No.	ATUN-7398A9
Carrier:	Blackboard Insurance Company
Loss Location	NY
Policy No.	HIBP-25271-02
Policy Period:	9/11/2020 - 9/11/2021
Description of Loss:	The insured reports member of the LLC and other employees are under investigation for misappropriation of funds and theft of Produce Depot Funds.

We are in receipt of your submitted claim and have set it up under file ATUN-7398A9. This loss will be handled out of our Program Property branch office by John Hilliard, direct # (361) 877-6145, email: John.Hilliard@Sedgwick.com.

If you have any questions, please do not hesitate to contact us at the number above.

Thank you for your attention to this matter.

**York Risk Services Group, Inc, a Sedgwick Company**